

**NATIONAL AIR CARRIER ASSOCIATION**

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**PILOT FLIGHT AND DUTY TIME RULE HEARING**

WRITTEN TESTIMONY

OF

A. OAKLEY BROOKS, PRESIDENT

NATIONAL AIR CARRIER ASSOCIATION

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

U. S. HOUSE OF REPRESENTATIVES

SEPTEMBER 16, 2010

National Air Carrier Association (NACA) appreciates the opportunity to submit written testimony on the occasion of the hearing held on September 16, 2010 before the Committee on Transportation and Infrastructure's Subcommittee on Aviation to consider the **Pilot Flight and Duty Time Rule**.

NACA was founded in 1962. Its fifteen current member carriers are: Air Transport International, Allegiant Air, Atlas Air, Evergreen Airlines, Kalitta Air, Miami Air, National Airlines, North American Airlines, Northern Air Cargo, Omni Air International, Ryan Air International, Southern Air, Sun Country Airlines, USA 3000 Airlines, and World Airways.

All NACA carriers are certificated under Title 14 Code of Federal Regulations Part 121. They are a diverse group of air carriers, providing scheduled low-cost passenger service, non-scheduled and on-demand passenger charter service, and all-cargo operations, both scheduled and non-scheduled. NACA members fill a unique niche in the air carrier industry, offering services in response to ever changing demands by the U.S. military, travelling public, and businesses.

NACA carriers are significant partners with the U.S. Department of Defense (DOD) in the Civil Reserve Air Fleet (CRAF) program. NACA airlines currently carry nearly 95% of the military passengers around the world and 40% of the military cargo. All airlines that operate missions for DOD are subject to strict and regular audits by department officials. This includes on-site audits at airlines' headquarters and operating locations, as well as en-route check-rides during actual missions. Airlines must file timely reports detailing any variances from strict procedures, and continual communication and feedback between airlines and the government is a matter of routine. DOD's Air Carrier Survey and Analysis Office is a partner with the Federal Aviation Administration (FAA) in this oversight of CRAF carriers. CRAF missions are operated safely.

**NACA has participated in every aviation rulemaking committee (ARC) on the subject of pilot flight and duty time since the early 1990s.** That participation included the just completed Flight and Duty Time Limitations and Rest Requirements ARC chartered by FAA in June 2009. NACA submitted an alternate proposal to this ARC, offering that the new rule continue to contain a separate Subpart S, which would apply to non-scheduled passenger and all-cargo carriers, with an additional requirement for a fatigue risk management system (FRMS) for all operators.

Any comments offered to this hearing will have been dramatically affected by the fact that FAA released its Notice of Proposed Rulemaking regarding Flightcrew Member Duty and Rest Requirements to the public on September 10, 2010. The landscape has now changed.

It would be a stretch to expect a detailed review of the NPRM and a considered reflection on its contents for this hearing. The one-hundred and forty-five (145) page notice, total, includes one-hundred and twenty-four pages (124) of background and discussion and twenty-one pages that set out the proposed new Part 117 in Chapter 1 of Title 14 Code of Federal Regulations. There are nearly fifty (50) elements of the proposed rule about which FAA is requesting comment from the public.

(It is also a stretch to expect the community affected by this proposed set of new rules to file meaningful comments within the sixty (60) days called for in the NPRM. NACA believes a period of one hundred and twenty (120) days is essential for meaningful responses; FAA and the public will benefit from well thought-out responses. This will still leave six and one-half months for the agency to write the final rule and comply with applicable law.)

NACA offers these remarks in the present context, following release of the NPRM:

1. NACA continues to support the use of fatigue science, where applicable, in making changes to the current FAA flight and duty time rules. Science in this context is not conclusive, however. The NPRM, itself, states, “As noted previously, sleep science has not been validated in the aviation context.” (p. 39). The American Medical Association stated in its position paper submitted to the flight and duty time ARC: “The prescriptive rule-making approach commonly used by regulatory agencies to regulate crew rest and flight and duty times is not derived from the foundational scientific research addressing the interaction of sleep and circadian processes and their effects on performance.”
2. NACA continues to believe it is appropriate and necessary to maintain a separate regulatory section similar to the current Subpart S, which governs the non-scheduled passenger and all-cargo operations of U.S. carriers. Subpart S was included in the regulations to recognize differing commercial environments between scheduled and non-scheduled airlines. Those differences continue and justify the basis for treating them separately.

3. FAA provides scant basis for its proposal to depart from current practice and have one set of rules for all types of operations (“one size fits all”), scheduled domestic and international (flag), and non-scheduled. Language in the NPRM makes the simple and we believe incorrect statement that all operations (scheduled and non-scheduled) are becoming similar and the proposed rule provides flexibility. Full stop. It concludes that one size can properly fit all. This, notwithstanding FAA Administrator Babbitt’s comments to the Air Line Pilots Association Safety Forum in August 2009: “...in rulemaking, not only does one size not fit all, but it’s unsafe to think it can.”
4. The NPRM eliminates separate Subpart S rules for non-scheduled carriers, but non-scheduled carriers **continue to have distinctly different operations compared to scheduled ones. The two types of carriers are not at all becoming ‘similar’, and those differences require separate rules.** Consider the following points:
  - Non-scheduled carriers fly fewer hours than scheduled carriers: (a) their aircraft achieve about eight (8) hours per day utilization compared to over thirteen (13) for scheduled airlines; and, (b) non-scheduled crews fly only fifty (50) hours per month compared to seventy-five (75) hours for scheduled airline crews.
  - **Non-scheduled crews may fly long sequences, but they receive much longer sleep opportunities than required by the rules both before and after such extended flight duty periods; this is the key justification for current Subpart S rules and why they should continue: longer flying but longer sleep opportunities;** scientists engaged in fatigue risk management have concluded such long duty/sleep sequences allow pilots to perform their duties safely.
  - Non-scheduled airlines fly when the customer dictates, not the other way around; this means non-repetitive flight segments, often on relatively short notice, to every corner of the globe; the vast majority of CRAF missions, for instance, are booked only three weeks in advance; but, as noted previously, non-scheduled flight crews receive longer sleep opportunities both before and after extended flight duty periods; maintaining flexibility for non-scheduled operations is essential.

5. NACA notes with enthusiasm the requirement in P.L. 111-216, signed into law on August 1, 2010, for all carriers to submit a Fatigue Risk Management Plan (FRMP) to the FAA administrator by October 31, 2010. The administrator has one year to evaluate and approve these plans. Fatigue risk management will be the cornerstone of every carrier's safety management system and will provide flexibility for carriers to perform ultra long range operations by demonstrating equivalent safety.
6. Industry must undertake a careful review of the prospective cost of the new rules. The right balance must be found toward the goal of continuing the highest level of safety at a cost that reflects competitive pressures from carriers worldwide.

In closing, National Air Carrier Association and its fifteen member airlines are committed to working closely with FAA and the entire aviation community to arrive at flight crew duty and rest rules that provide the highest level of safety. Participation in the review of FAA's just-released NPRM provides a timely and unique opportunity for the aviation operating community to craft rules that will take it to the next level of safety. NACA welcomes and looks forward to that process.